

STATE OF MICHIGAN  
COURT OF APPEALS

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*In re* BLACK, Minors.

UNPUBLISHED  
October 16, 2018

No. 343360  
Ingham Circuit Court  
Family Division  
LC No. 16-001480-NA

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Before: CAVANAGH, P.J., and MARKEY and LETICA, JJ.

PER CURIAM.

Respondent appeals by right the trial court’s order terminating her parental rights to the two minor children under MCL 712A.19b(3)(c)(i), (g), and (j). We affirm.

Because of her drug addiction, respondent was unable to care for her children, and she placed them in her mother’s care. Her mother also used illegal substances and could not provide proper care for the children. As a result, in November 2016, the children were removed from the home. The trial court assumed jurisdiction over the children after respondent did not appear for the adjudication. Following the December 2016 initial dispositional hearing, respondent began receiving services and methadone treatments from Red Cedar Clinic. Nonetheless, she continued to use substances, including opiates, morphine, and cocaine throughout the proceedings. Between December 2016 and November 2017, respondent appeared for 32 of her 126 drug screens. Only four of those screens were negative. There were numerous show-cause hearings to address respondent’s noncompliance with court orders. In November 2017, a supplemental petition was filed. As of the December 2017 termination hearing, respondent had achieved a period of sobriety; however, the trial court found that she had failed to rectify her substance abuse and that there was not a reasonable likelihood she would be able to do so in reasonable time. Considering the children’s need for permanency, the court found that termination of respondent’s parental rights was in their best interests.

Respondent first argues that petitioner failed to make reasonable reunification efforts. Specifically, she contends that there were inadequate services offered to address her mental health issues. We disagree. Because respondent “failed to object or indicate that the services provided to [her] were somehow inadequate,” this issue is unpreserved. *In re Frey*, 297 Mich App 242, 247; 824 NW2d 569 (2012). Unpreserved issues are reviewed for plain error affecting substantial rights; an error affects substantial rights if it affects the outcome of the proceedings. *In re Utrera*, 281 Mich App 1, 8; 761 NW2d 253 (2008).

“In general, petitioner must make reasonable efforts to rectify conditions, to reunify families, and to avoid termination of parental rights.” *In re LE*, 278 Mich App 1, 18; 747 NW2d 883 (2008). “As part of these reasonable efforts, [petitioner] must create a service plan outlining the steps that both it and the parent will take to rectify the issues that led to court involvement and to achieve reunification.” *In re Hicks/Brown*, 500 Mich 79, 85; 893 NW2d 637 (2017). “While [petitioner] has a responsibility to expend reasonable efforts to provide services to secure reunification, there exists a commensurate responsibility on the part of respondents to participate in the services that are offered.” *In re Frey*, 297 Mich App at 248.

Our review of the record shows that petitioner made reasonable efforts to provide respondent with individual counseling, which was identified as a barrier to reunification. First, respondent was to undergo a psychological evaluation, which she did not complete until May 2017. The psychologist recommended that respondent receive counseling. The caseworker referred respondent to Community Mental Health for that purpose. Respondent did not proceed beyond the intake because of an “insurance issue.” The caseworker made an additional referral for petitioner to cover the cost of counseling. At the November 2017 permanency planning hearing, respondent said that she contacted the Department of Health and Human Services but was informed that Medicaid was not an option for her because her income was too high.

It is unclear if respondent’s explanation is accurate. The trial court seemed dubious that respondent’s lack of insurance would preclude her from receiving counseling at Community Mental Health. In any event, it cannot be said that petitioner did not make reasonable efforts to provide respondent with counseling. The caseworker was aware of respondent’s mental health history<sup>1</sup> and attempted to provide services for her. Respondent’s lack of insurance could have been addressed sooner if she had not delayed in completing the psychological evaluation. Further, the primary barrier to reunification was respondent’s substance abuse. Respondent was receiving substance abuse counseling through Red Cedar Clinic. There is nothing in the record that would lead us to conclude that mental health counseling would have led to a different result in this case.<sup>2</sup> See *In re Fried*, 266 Mich App 535, 543; 702 NW2d 192 (2005).

Respondent also argues that her parenting time was improperly suspended for the purpose of forcing her compliance with the case service plan. “If the court determines that parenting time, even if supervised, may be harmful to the juvenile’s life, physical health, or mental well-being, the court may suspend parenting time until the risk of harm no longer exists.” MCL 712A.13a(13). Respondent’s parenting time was suspended in May 2017 after she threatened physical harm to her son during an argument. There was plainly a basis to find that parenting time might be harmful to the children. In the ex parte motion to suspend parenting time, the lawyer-guardian ad litem opined that respondent’s lack of compliance with the case service plan

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<sup>1</sup> At the termination hearing, respondent testified that she had been diagnosed with depression and bipolar disorder. She was not being treated for those disorders.

<sup>2</sup> Respondent refers to the trial court asking her whether she was “self-treating” her mental health disorders through substance abuse. Even if this were relevant to addressing her mental health issues, at the termination hearing, respondent denied that this was true.

had contributed to her inability to have appropriate visits with her children. But it does not follow that respondent's parenting time was suspended in order to coerce her into complying with the service plan. For those reasons, respondent's argument is without merit.

Next, respondent contends that the trial court clearly erred by finding clear and convincing evidence to terminate her parental rights. We disagree. A trial court's factual finding that a statutory ground for termination has been proved by clear and convincing evidence is reviewed for clear error. MCR 3.977(K); *In re Utrera*, 281 Mich App at 15. "A finding of fact is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court's special opportunity to observe the witnesses." *In re BZ*, 264 Mich App 286, 296-297; 690 NW2d 505 (2004).

The trial court terminated respondent's parental rights under MCL 712A.19b(3)(c)(i),<sup>3</sup> which provides as follows:

(3) The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:

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(c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:

(i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

Respondent's primary argument is that the trial court clearly erred in finding that she would not be able to rectify her substance abuse issues within a reasonable time. But there was ample evidence to support that finding. Respondent used illegal drugs throughout most of the proceedings, and her drug screens speak for themselves. Her participation in substance abuse counseling was underwhelming. Previously, respondent had admitted that she was not interested in quitting drugs.

At the termination hearing, respondent contended that she had been sober for 46 days and was now ready to quit. Two counselors at Red Cedar Clinic testified to a positive change in her attitude. But the trial court found that her two recent negative drug screens established only a 19-day period of sobriety. And the trial court was unconvinced that respondent had definitely reached a turning point. Given her long period of noncompliance, the court determined that a

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<sup>3</sup> Because the trial court did not clearly err in finding sufficient evidence to terminate respondent's parental rights under MCL 712A.19b(3)(c)(i), we decline to address the other statutory grounds for termination. See *In re Ellis*, 294 Mich App 30, 32; 817 NW2d 111 (2011).

substantial waiting period would be necessary to see if respondent could maintain sobriety. The court relied on the testimony that respondent may not be off methadone for a year. Respondent's brief period of sobriety must be viewed in light of her admission that she had used cocaine for 10 years and heroin for 1.5 to 2 years. Considering both that respondent did not begin showing a commitment to sobriety until termination proceedings were authorized and the children's ages, the trial court did not clearly err in finding that there was not a reasonable likelihood that respondent would be able to rectify her substance abuse issue within a reasonable time. Accordingly, the court did not clearly err in finding sufficient evidence to terminate respondent's parental rights under MCL 712A.19b(3)(c)(i).

We also find no clear error in the trial court's determination that termination of respondent's parental rights was in the children's best interests. "If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child's best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made." MCL 712A.19b(5). The trial court correctly considered the parental bond and the children's need for permanency, stability, and finality. *In re White*, 303 Mich App 701, 713; 846 NW2d 61 (2014). The children were bonded to respondent, but respondent's commitment to her children was questionable. As the trial court noted, respondent placed her children with their grandmother and was thereafter in and out of that home. Additionally, after the trial court issued a bench warrant for her arrest in the beginning of October 2017, respondent stopped attending parenting time. Respondent's reasoning was that she did not want to be arrested in front of her children. But, there is no discernible reason why respondent had to wait until parenting time to confront or address the outstanding warrant.

There was evidence establishing the children's need for permanency, stability, and finality. And there was substantial evidence supporting the trial court's skepticism that respondent would be able to maintain sobriety. Under those circumstances, the trial court did not clearly err in prioritizing the children's need for permanency over the parental bond. Giving due regard to the trial court's opportunity to observe respondent, *In re BZ*, 264 Mich App at 296-297, we are not left with a definite and firm conviction that a mistake has been made.

We affirm.

/s/ Mark J. Cavanagh

/s/ Jane E. Markey

/s/ Anica Letica